IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR Nos 35 to 41 of 1992
Date of decision:14.11.2006

The Commissioner of Income Tax, Jalandhar

....Petitioner

versus

Quality Packs Maqsoodan, GT Road, Jalandhar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.S.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question has been referred for the opinion of this Court by the Income tax Appellate Tribunal, Amritsar Bench, Amritsar, (for short, 'the Tribunal') arising out of its order dated 26.10.1990 in ITA Nos.384 to 390 (ASR)/1989, for the assessment years 1981-82 to 1987-88:-

> "Whether on the facts prevailing in this case the Tribunal was in error in cancelling interest levied under section 201(1A) of the Income tax Act, 1961 for the seven years under reference?"

The assessee firm was subjected to interest under section 201 (1A) of the Income Tax Act, 1961 (for short, 'the Act') on the ground that it failed to deduct tax at source under section 195 of the Act in respect of rent paid to M/s. Saggar & Co. Association of nine persons for the assessment year 1981-82 and rent paid to three persons for the later years whose shares were definite or ascertainable and who were co-owners for purposes of

Section 26 of the Act. Smt. Baldev Kaur was holding power of attorney from Shri Saggar Singh, one of the co-owners of properties held by M/s. Saggar and Co.

The Tribunal set aside the levy of interest on the ground that there being no evidence that M/s. Saggar and Co. was a non-resident, payment of rent to M/s. Saggar and Co. was not liable to deduction of tax at source under section 195 of the Act.

Reference to provisions of section 195 of the Act makes it clear that liability to deduct tax arises only if any payment is to be made to a non-resident, which has been defined under section 2(30) of the Act.

Thus, in absence of a finding being recorded that the assessee was liable to deduct tax out of the payments to be made, the penalty by way of interest could not be justified.

In **ITO, Rampur v. Raza Textiles Limited,** (1977) 106 ITR 408, it was held that if the control and management of a firm is partly within taxable territories, such a firm cannot be held to be non-resident.

In view of the above, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 14, 2006 (Rajesh Bindal)
'gs' Judge